

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Wednesday, February 16, 2011
10:00 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: February 4, 2011

RE: Closed Session of the Board to be held on February 16, 2011

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISION OF ADMINISTRATIVE LAW JUDGE:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. JNSJ ROOFING, INC., 09-R1D2-1453

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1. ALLIED CASH ADVANCE CALIFORNIA LLC, 10-R1D1-2510 AND 2511
2. ALLSTAR SEED CO. DBA EIGHT STAR COMMODITIES, 10-R3D2-4108
3. ANODIZING INDUSTRIES, INC., 10-R4D2-2578
4. ARMAN AUTO SERVICE CENTER/HERB'S GARAGE, 10-R3D1-1991

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5. AWI MANAGEMENT CORPORATION, 10-R4D3-3376 THROUGH 3379
6. BALLAST POINT BREWING COMPANY, 10-R3D2-3853 AND 3854
7. FEROZE D. BATH DBA LOS BANOS FARM LABOR CONTRACTOR, 10-R6D5-2358 AND 2359
8. MARIA GUADALUPE BENRARD DBA B&S PALLETS, 10-R6D5-0584 AND 0585
9. CALIFORNIA LUTHERAN UNIVERSITY, 10-R4D3-3658
10. DEWEY & SONS PAINTING, 09-R1D5-4100 THROUGH 4103
11. DIAMOND AUTO SPA, INC., 10-R6D5-2925 THROUGH 2927
12. DONNER SUMMIT RESORTS LLC DBA DONNER SKI RANCH, 08-R2D1-3588
13. EDSEL SANDUSKY CORP., 09-R2D5-1430 AND 1431
14. FOSTER'S WINE ESTATES AMERICAS COMPANY DBA BERINGER VINEYARDS, 09-R1D5-0583
15. JOSE LUIS GAITAN DBA GAITAN PLASTERING, 09-R1D5-0707
16. GONZALEZ PALLETS, 10-R6D5-2019
17. ALFREDO GONZALEZ DBA GONZALEZ LANDSCAPING, 10-R4D1-1334 AND 1335
18. HENKELS & McCOY, INC., 09-R1D2-1461 AND 1462
19. HI-TEMP INSULATION, INC., 10-R4D3-2585
20. TAC HO DBA ALLSTATE AUTO BODY, 10-R6D7-2534
21. INTERPAC TECHNOLOGIES, INC., 08-R2D1-4199 AND 4200 and 08-R2D1-5100 AND 5101
22. J. FLETCHER CREAMER & SON, INC., 09-R1D2-4044
23. JODY DONAHOO RFG., 08-R2D1-3648 AND 3649
24. L. A. COUNTY PUBLIC LIBRARY, 10-R4D3-3080
25. LITTLE CAESARS ENTERPRISES (LCE), 10-R3D1-3666

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26. NATIONAL DRYWALL CORPORATION, 10-R6D5-2125
27. NORENE RANCHES, INC., 09-R2D3-0805 AND 0806
28. NUEVO MEXICO, 10-R6D7-2024
29. PACIFIC COAST STEEL, 10-R2D3-0159
30. PRIMARERA AG. SERVICE, INC., 10-R6D5-2375
31. PRISON INDUSTRY AUTHORITY, 08-R2D5-3628
32. PRO-TECH CONSTRUCTION, INC., 10-R2D3-0079 AND 0080
33. RHYLEY CONSTRUCTION CO., INC., 10-R6D5-1372 THROUGH 1375
34. GREGORY RODRIGUEZ DBA RODRIGUEZ ROOFING, 10-R6D5-3132
35. S. J. LOUIS CONSTRUCTION, 10-R4D3-2271
36. SILVERLINE CONSTRUCTION, INC., 09-R1D2-3965 AND 3966
37. TIC-THE INDUSTRIAL COMPANY DBA THE INDUSTRIAL COMPANY, 10-R4D3-3510
38. TOM LEWIS RESTORATION & CONSULTING, INC., 09-R1D1-3043
39. TRINITY COUNTY TRANSPORTATION, 10-R2D3-1894
40. TRIPLE I PRESS LLC, 10-R3D2-1633 THROUGH 1635
41. U. S. METALS, INC., 10-R3D3-2900 THROUGH 2902
42. WALLY & JIMS BODY SHOP, INC., 10-R6D5-3686 AND 3687
43. LUCY WHITTIER DBA LAS COLINAS, 09-R2D1-3549
44. WM BUILT-MORE CONSTRUCTION, 08-R2D5-3503 AND 3504
45. Z R – RAM, INC., 10-R6D5-2920

STIPULATION:

1. SSA TERMINALS (OAKLAND) LLC, 09-R1D4-1033 THROUGH 1035

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PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1. RATTO BROS, INC., 10-R6D3-9291
2. SZEMENYEI CONSTRUCTION, INC., 10-R3D1-0008

DENIALS OF PETITIONS FOR RECONSIDERATION (DRAFTS):

If the Appeals Board votes to deny a Petition for Reconsideration, the Legal Unit drafts a letter of denial to the petitioner. The draft correspondence is then reviewed and approved for signature or not approved for signature by the Board.

1. MASCON, INC., 08-R2D1-4278 & 4279

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A & C PALLETS, 10-R6D5-1687 AND 1688
2. AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
3. AC TRANSIT, 08-R1D4-0135
4. AGWOOD MILL & LUMBER, INC., 08-R1D5-1068
5. VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY
DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272
6. ANNING-JOHNSON COMPANY, 06-R1D3-1976
7. BART, 03-R1D1-5170
8. BIMBO BAKERIES USA, 05-R6D2-856 AND 857
9. BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
10. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
11. BURRTEC WASTE INDUSTRIES, INC., 10-R3D3-9222

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12. BURTON L. SILVA FARMS, 09-R1D2-1498
13. C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155
14. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
15. CA CORRECTIONS, 08-R2D5-0975 THROUGH 0978
16. CA RASMUSSEN, INC., 08-R4D5-219 AND 220
17. CALIFORNIA INTERSTATE EXPRESS, 09-R4D2-3460
18. CLINE CELLARS, INC., 08-R1D5-2946
19. CJI PROCESS SYSTEMS, 09-R6D2-1333 THROUGH 1336
20. COMMERCIAL METAL FORMING, 09-R3D1-1592
21. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
22. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
23. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
24. DESIGN BUILDERS, INC., 08-R4D4-1901
25. JOAQUIN DUARTE DBA PROFESSIONAL TREE SERVICE, 09-R3D3-1111
26. DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
27. DUKE PACIFIC, INC., 08-R3D3-574
28. DUININCK BROS., INC., 06-R4D3-2871
29. EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS, 09-R6D2-2325 THROUGH 2332
30. ESTENSON LOGISTICS LLC 05-R1D4-1755 AND 1756
31. EZ MIX, INC., 08-R4D3-1898
32. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
33. FORTUNA IRON WORKS 06-R2D3-4222
34. G.T. ALDERMAN, INC., 05-R4D3-3513

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35. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
36. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
37. GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3678
38. HB PARKCO, 07-R4D2-1730 AND 1731
39. THE HERRICK CORP., 07-R3D1-495
40. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
41. INTERNATIONAL ALUMINUM CORPORATION, 09-R6D2-1185
42. IRWIN INDUSTRIES, INC., 08-R6D4-1454 THROUGH 1456
43. JENSEN PRECAST, 05-R2D1-2377
44. JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
45. KELLY SERVICES, INC., 06-R1D2-1024
46. KINDER MORGAN ENERGY PARTNERS, LP., 05-R5D1-2013 AND 2014
47. LA MINA CANTINA, 09-R2D5-0039
48. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
49. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
50. LION RAISINS, INC., 08-R2D5-2253 AND 2254
51. L N I CUSTOM MANUFACTURING, 10-R6D2-9154
52. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
53. LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
54. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR
08-R6D5-3466 AND 3467
55. MARINE TERMINALS, 08-08-R6D2-1920
56. MARTIN J. SOLIS, DBA SOLIS FARM LABOR, 08-R2D1-3415
57. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414

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- THROUGH 3418 (Both DOSH & ER filed a Petit for Recon that was granted)
58. MELMARC PRODUCTS, INC., 09-R3D1-2878
 59. MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
 60. MILLENIUM GENERATION, INC., 08-R4D3-5047
 61. MOOREFIELD CONSTRUCTION, INC., 10-R3D5-9207
 62. NEWMAN FLANGE & FITTING COMPANY, 07-R2D4-2581 THROUGH 2583
 63. NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
 64. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
 65. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
 66. POUK & STEINLE, INC., 09-R3D3-0491
 67. R & L BROSAMER, INC., 03-R1D5-4832
 68. RAMON ARANDA dba I & R PALLETS, 10-R6D5-9053
 69. RIEZEBOS CONSTRUCTION, INC., 08-R2D5-1730
 70. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
 71. SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-0655
 72. SANTA PAULA HARVESTING, 09-R4D3-0510 THROUGH 0514
 73. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
 74. SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
 75. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
 76. SMUD, 08-R2D1-4887 THROUGH 4889 (filed by DOSH)
 77. STACY & WITBECK, INC., 05-R1D1-1142
 78. SUNOPTA FRUIT GROUP, 09-R3D1-9245
 79. SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850

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80. TEICHERT & SON, INC., A CORPORATION DBA TEICHERT AGGREGATES, 04-R5D2-850 AND 851
81. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 05-R2D4-2650 AND 2651
82. UKIAH FORD-LINCOLN=MERCURY, INC., 06-R1D5-2256 AND 2557
83. UNITED PARCEL SERVICE, 07-R3D3-3322
84. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095
85. WINCHESTER CONSTRUCTION, 08-R4D3-4709 AND 4710

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. JERLANE, 37-2007-00056381-CU-WM-NC (01-4344/4345)
2. JERLANE, 37-2009-00059323-CU-WM-NC (08-1733)
3. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
4. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159 (07-9223)
5. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
6. SHIMMICK CONSTRUCTION CO., 34-2008-80000121-CU-WM-GDS (06-1136)
7. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
8. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
9. WEBCOR CONSTRUCTION LP dba WEBCOR BUILDERS, 34-2009-80000384 (08-R1D2-2499/2500)
10. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)

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11. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
12. FRESNO PRODUCE, CO., INC., 10CECG02394 (10-R6D1-9064)
13. MISSION FLAVORS AND FRAGRANCE, INC., 34-2010-80000599 (05-R6D2-
1139)
14. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047
(07-R5D1-3611)
15. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-
80000640 (08-R2D1-0027 THROUGH 0030)
16. EMERSON RUSSELL MAINTENANCE CO., RG-10543219 (08-R1D4-4167)
17. SMUD, 34-2010-80000723 (08-R2D1-4887)
18. CAL ENERGY OPERATING CORP., 34-2010-80000735 (09-R3D2-3675 & 3676)

COURT OF APPEAL

1. HARRIS CONSTRUCTION COMPANY, INC., C065265 (07CS00518) (05-3914)
2. HARRIS CONSTRUCTION COMPANY, INC., C065265 (07CS00518) (05-3914)

PERSONNEL:

(Issues regarding staff.)

Any matter not completed at this Closed Session may be continued to subsequent meetings.